

benefits and be subject to the same regulations as the franchised cable television operator.

V. THE COMMISSION SHOULD BE CAUTIOUS IN APPLYING THE TELEPHONE INSIDE WIRING RULES TO CABLE HOME WIRING BECAUSE SEVERAL IMPORTANT DIFFERENCES BETWEEN TELEPHONE AND CABLE WIRING EXIST.

USTA, like many commenters in the previous home wiring proceeding, supports wholesale application of the telephone inside wiring model to cable home wiring.⁴⁶ USTA argues that, since the rationale behind the adoption of the telephone inside wiring rules -- "to increase competition, promote market entry, produce cost savings, and create a competitive environment for the development of telecommunications services"⁴⁷ -- also applies to cable home wiring,⁴⁸ the Commission should adopt home wiring rules that are modeled after the telephone inside wiring rules. Time Warner has consistently argued that, while the telephone inside wiring rules may provide certain principles that can be applied in the context of cable home wiring, those rules are not

⁴⁶See USTA Petition at 7-8; see also American Public Power Association Comments at 14-17; Bell Atlantic Comments at 1, 4-6; Bell Atlantic Reply to Comments on Recon. at 1-2; BellSouth Corporation Comments at 2-3; Building Industry Consulting Service International Comments at 3-4; Consumer Electronics Group of the Electronic Industries Association Comments at 5-9; NYNEX Telephone Companies Comments at 3-4.

⁴⁷USTA Petition at 7-8.

⁴⁸But see CATA Reply Comments at 3 ("[T]he objectives of allowing telephone and cable subscribers to own home wiring are different. Ownership of telephone wiring was instituted to promote competition for wiring installation and maintenance. This is not the case for cable wiring. Cable operators are not in the business of installing home wiring.").

a perfect model because several important differences between telephone and cable wiring exist, and the telephone wiring rules should, therefore, be considered judiciously.⁴⁹ The Commission, in its Report and Order, recognized these important differences, and declined to follow the telephone inside wiring rules for a number of reasons.⁵⁰ The Commission should adhere to its prior decision and decline to follow the telephone inside wiring rules in this rulemaking as well.

First, as mentioned in part II of these comments, supra, the language of the home wiring provision of the 1992 Act only refers to the disposition of cable home wiring after termination of cable service. The telephone inside wiring rules extend far beyond this statutory limit by giving consumers control over telephone inside wiring while they are still receiving telephone service.⁵¹ Second, the Commission agreed with the many commenters who pointed out that cable operators bear FCC-imposed signal leakage responsibilities that telephone service providers do not bear.⁵² This is not a minor distinction, given the

⁴⁹See also id. at 2-3.

⁵⁰Report and Order, 8 FCC Rcd 1435, ¶ 6.

⁵¹See id.

⁵²Id. at ¶¶ 6, 22 (because the home wiring rules enacted in the Report and Order apply only after termination of cable service, the responsibilities of cable operators to prevent signal leakage while providing service remain unaltered); see also Blade Communications, Inc., et al. Joint Comments at 7-10.

importance of wiring maintenance to cable system performance.⁵³

If the cable operator is to be held responsible for leakage from cable wiring while it is providing service over that wiring, then the cable operator must retain control over that wiring in order to properly maintain the wiring against signal leakage.⁵⁴

There are several other substantial differences, not specifically noted by the Commission in its Report and Order, between telephone and cable wiring that make wholesale application of the telephone inside wiring rules impractical in the cable context. Cable wiring is subject to signal ingress if tampered with or installed improperly; telephone wiring is not subject to such interference. Accordingly, the telephone inside wiring rules do not contain provisions to deal adequately with this problem because it does not exist in the telephone wiring context.

The telephone inside wiring rules are also inadequate for cable home wiring purposes because of fundamental technical differences between telephone and cable technology and distribution architecture. For example, the entire frequency spectrum delivered by the cable operator constantly pulses through cable wiring, even when all television sets in a subscriber's dwelling are turned off, but no signals are

⁵³See NYSCCT Comments at 4-5 (technical performance of internal wiring is not of minor consequence in the performance of a modern cable television system).

⁵⁴See Time Warner Reply Comments at 13-14; NYSCCT Comments at 7.

transmitted over telephone wiring when the telephones in a subscriber's dwelling are not in use.⁵⁵ For these reasons, the telephone inside wiring rules that allow a subscriber to "remove, replace, rearrange or maintain" that wiring while service is still being provided over the wiring cannot be applied responsibly to cable home wiring.

Given that these significant and substantial differences exist between telephone and cable inside wiring, the Commission should continue to view the telephone inside wiring rules cautiously, and should not engage in a blanket adoption of those rules for cable home wiring.

VI. ANY PRE-TERMINATION HOME WIRING RULES ENACTED MUST ADDRESS THE QUESTION OF WHO WILL BE HELD RESPONSIBLE FOR PREVENTION OF SIGNAL LEAKAGE AND MAINTENANCE OF CABLE WIRING.

If the Commission enacts any cable home wiring rules that are applicable prior to a subscriber's termination of cable service, it must then address the issue of responsibility for signal leakage, picture quality and other technical standards.⁵⁶ If the Commission does not want to amend its current cable

⁵⁵See discussion supra at part III.

⁵⁶The Commission specifically stated that the signal leakage rules remained unchanged while the cable operator was still providing service over the home wiring. Report and Order, 8 FCC Rcd 1435, ¶ 22. The Commission also stated that cable operators "will not be held responsible for facilities over which [they do] not provide service." Id. This leaves open the question of who will be held responsible for signal leakage in situations where the subscriber has gained control over the home wiring, and both the cable operator and another communications service provider are providing their services over that wiring.

television technical standards, then control over the cable home wiring must remain with the cable operator during the time that a subscriber is receiving cable service because the Commission's current rules hold the cable operator legally responsible for the signal that is transmitted through the home wiring.⁵⁷ Cable operators cannot be held legally responsible for signal transmission through wiring over which it has been forced to relinquish control.

If a cable operator were forced to yield control over its cable wiring while still providing cable service to a subscriber so that some other service provider could access the wiring and use it to carry its service (assuming this is even physically possible⁵⁸), that other provider could tamper with the wiring, which may result in signal leakage or deteriorated picture quality from a weak or interfered with signal. Even though this signal leakage and poor picture quality occurred through no fault of the cable operator, current Commission rules nevertheless hold the cable operator responsible.⁵⁹ Home wiring rules that allowed this situation to occur would be inherently unfair to cable

⁵⁷See 47 C.F.R. §§ 76.605, 76.611.

⁵⁸See discussion supra at part III.

⁵⁹NYNEX has suggested that, if cable home wiring were being used by two or more providers simultaneously, "the service providers would be jointly responsible to prevent signal leakage." NYNEX Reply to Opposition to Petition for Recon. at 4. Thus suggestion, while sounding fair, raises yet another question that would have to be addressed -- who is to determine which provider is responsible for what part or how much of the cost of maintaining the wiring and preventing signal leakage. Obviously, the NYNEX proposal is totally impractical.

operators, and the Commission should not put itself in the position of creating such an inequitable situation unnecessarily.

VII. CONCLUSION

For all of the reasons set forth above, and for all of the reasons set forth in Time Warner's Comments, Reply Comments and Response to Petitions for Reconsideration filed in the initial home wiring proceeding, the Commission should not adopt home wiring rules in accordance with the propositions set forth in the USTA Petition.

Respectfully submitted,

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